

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 695
Committee Substitute Favorable 5/15/13
Third Edition Engrossed 5/16/13
Senate Judiciary I Committee Substitute Adopted 7/2/13

Short Title: Family, Faith, and Freedom Protection Act.

(Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO PROTECT RIGHTS AND PRIVILEGES GRANTED UNDER THE UNITED STATES AND NORTH CAROLINA CONSTITUTIONS IN THE APPLICATION OF FOREIGN LAW, TO MODIFY CERTAIN LAWS PERTAINING TO ABORTION, TO LIMIT ABORTION COVERAGE UNDER HEALTH INSURANCE PLANS OFFERED UNDER A HEALTH BENEFIT EXCHANGE OPERATING IN NORTH CAROLINA OR OFFERED BY A COUNTY OR MUNICIPALITY, TO PROHIBIT A PERSON FROM PERFORMING OR ATTEMPTING TO PERFORM AN ABORTION WHEN THE SEX OF THE UNBORN CHILD IS A SIGNIFICANT FACTOR IN SEEKING THE ABORTION, TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO AMEND RULES PERTAINING TO CLINICS CERTIFIED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO BE SUITABLE FACILITIES FOR THE PERFORMANCE OF ABORTIONS, AND TO AMEND THE WOMEN'S RIGHT TO KNOW ACT.

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE

SECTION 1. This act may be known and cited as the Family, Faith, and Freedom Protection Act of 2013.

PART II. APPLICATION OF FOREIGN LAW

SECTION 2.(a) Chapter 1 of the General Statutes is amended by adding a new Article to read:

"Article 7A.

"Application of Foreign Law.

§ 1-87.2. Definitions.

The following definitions apply in this Article:

- (1) Fundamental constitutional right. – A fundamental right of a natural person guaranteed by the United States Constitution or the North Carolina Constitution.
- (2) Foreign law. – A law, rule, resolution, legal code, legal system, or any component of a legal system established and used or applied in a foreign venue or forum.



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- 1 (3) Foreign venue or forum. – A venue or forum operating under the authority of
2 a government other than any of the following:
3 a. The United States.
4 b. A state, district, commonwealth, territory, or insular possession of
5 the United States.
6 c. Any other government with regard to which the decision in this State
7 as to whether to recognize a judgment of that government's courts is
8 initially subject to determination under the Full Faith and Credit
9 Clause of the United States Constitution.

10 **"§ 1-87.3. Public policy.**

11 In recognition that the United States Constitution and the Constitution of North Carolina
12 constitute the supreme law of this State, the General Assembly hereby declares it to be the
13 public policy of this State to protect its citizens from the application of foreign law that would
14 result in the violation of a fundamental constitutional right of a natural person. The public
15 policies expressed in this section shall apply only to actual or foreseeable violations of a
16 fundamental constitutional right resulting from the application of the foreign law.

17 **"§ 1-87.4. Nonapplication of foreign law that would violate fundamental constitutional**
18 **rights.**

19 A court, administrative agency, arbitrator, mediator, or other entity or person acting under
20 the authority of State law shall not apply a foreign law in any legal proceeding involving, or
21 recognize a foreign judgment involving, a claim for absolute divorce, divorce from bed and
22 board, child custody, child support, alimony, or equitable distribution if doing so would violate
23 a fundamental constitutional right of one or more natural persons who are parties to the
24 proceeding.

25 **"§ 1-87.5. Interpretation of contracts providing for choice of foreign law.**

26 (a) In the interpretation or enforcement by a court, administrative agency, arbitrator,
27 mediator, or other entity or person acting under the authority of State law of any contract or
28 other agreement that provides for the choice of a foreign law to govern its interpretation or the
29 resolution of any claim or dispute, the court or administrative agency shall preserve the
30 fundamental constitutional rights of natural persons who are parties to the contract or other
31 agreement.

32 (b) If enforcement of any provision in a contract or other agreement for the choice of
33 foreign law would result in a violation of a fundamental constitutional right of one or more of
34 the natural persons who are parties to the contract or other agreement, the agreement or contract
35 shall be modified or amended to the extent necessary to preserve the fundamental constitutional
36 rights of the natural persons.

37 **"§ 1-87.6. Interpretation of contracts providing for choice of foreign venue or forum.**

38 If the enforcement of any provision in a contract or other agreement providing for a choice
39 of a foreign venue or forum would result in a violation of a fundamental constitutional right of
40 one or more of the natural persons who are parties to the contract or other agreement, that
41 provision shall be modified or amended to the extent necessary to preserve the fundamental
42 constitutional rights of the natural persons.

43 **"§ 1-87.7. Motions to transfer proceedings to a foreign venue or forum.**

44 If a natural person subject to personal jurisdiction in this State seeks to maintain a litigation
45 proceeding, arbitration proceeding, or other similarly binding proceeding in this State, and if a
46 court of this State finds that granting a motion by another party to the proceeding to transfer the
47 proceeding to a foreign venue or forum would likely lead to the violation of a fundamental
48 constitutional right of the natural person who is the nonmovant in the foreign forum with
49 respect to the matter in dispute, the motion shall be denied.

50 **"§ 1-87.8. Contracts not capable of modification to preserve fundamental constitutional**
51 **rights void.**

1 Any provision in a contract or other agreement incapable of being modified or amended
2 pursuant to this Article in order to preserve the fundamental constitutional rights of the natural
3 persons who are parties to the contract or agreement shall be null and void.

4 **"§ 1-87.9. Strict construction of waivers of constitutional rights.**

5 Nothing in this Article shall be interpreted to limit the right of natural persons voluntarily to
6 restrict or limit their own constitutional rights by contract or specific waiver consistent with
7 constitutional principles; however, any ambiguity in the language of any such contract or other
8 waiver shall be strictly construed in favor of preserving the constitutional rights of natural
9 persons in this State.

10 **"§ 1-87.10. Application.**

11 The provisions in this act shall apply only to proceedings or matters under Chapter 50 and
12 Chapter 50A of the General Statutes."

13 **SECTION 2.(b)** This section becomes effective September 1, 2013, and applies to
14 agreements and contracts entered into on or after that date.

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16 **PART III. HEALTH CARE CONSCIENCE PROTECTION**

17 **SECTION 3.(a)** G.S. 14-45.1(e) reads as rewritten:

18 "(e) Nothing in this section shall require a physician licensed to practice medicine in
19 North Carolina or ~~Carolina~~, any ~~nurse-nurse~~, or any other health care provider who shall state
20 an objection to abortion on moral, ethical, or religious grounds, to perform or participate in
21 medical procedures which result in an abortion. The refusal of ~~such physician-a physician,~~
22 nurse, or health care provider to perform or participate in these medical procedures shall not be
23 a basis for damages for ~~such-the~~ refusal, or for any disciplinary or any other recriminatory
24 action against ~~such physician-the~~ physician, nurse, or health care provider. For purposes of this
25 section, the phrase "health care provider" shall have the same meaning as defined under
26 G.S. 90-410(1)."

27 **SECTION 3.(b)** G.S. 14-45.1(f) reads as rewritten:

28 "(f) Nothing in this section shall require a ~~hospital-or~~hospital, other health care
29 institution-institution, or other health care provider to perform an abortion or to provide
30 abortion services."

31 **SECTION 3.(c)** This section becomes effective 30 days after it becomes law.

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33 **PART IV. LIMITS ON ABORTION FUNDING UNDER HEALTH INSURANCE**
34 **PLANS OFFERED THROUGH A HEALTH INSURANCE EXCHANGE OR BY**
35 **LOCAL GOVERNMENTS**

36 **SECTION 4.(a)** Article 51 of Chapter 58 of the General Statutes is amended by
37 adding the following new section to read:

38 **"§ 58-51-63. Coverage for abortions not allowed in plans offered through Exchange.**

39 (a) Pursuant to the authority granted to states under 42 U.S.C. § 18023(a), no qualified
40 health plan offered through an Exchange created under Subchapter III of Chapter 157 of Title
41 42 of the U.S. Code and operating within this State shall include coverage for abortion services.

42 (b) The coverage limitation in subsection (a) of this section shall not apply to an
43 abortion performed when the pregnancy is the result of an act of rape or incest or the life of the
44 mother is endangered by a physical disorder, physical illness, or physical injury, including a
45 life-endangering physical condition caused by or arising from the pregnancy itself."

46 **SECTION 4.(b)** G.S. 153A-92(d) reads as rewritten:

47 "(d) A county may purchase life insurance or health insurance or both for the benefit of
48 all or any class of county officers and employees as a part of their compensation. A county may
49 provide other fringe benefits for county officers and employees. In providing health insurance
50 to county officers and employees, a county shall not provide abortion coverage greater than that

1 provided by the State Health Plan for Teachers and State Employees under Article 3B of
2 Chapter 135 of the General Statutes."

3 **SECTION 4.(c)** G.S. 160A-162(b) reads as rewritten:

4 "(b) The council may purchase life, health, and any other forms of insurance for the
5 benefit of all or any class of city employees and their dependents, and may provide other fringe
6 benefits for city employees. In providing health insurance to city employees, the council shall
7 not provide abortion coverage greater than that provided by the State Health Plan for Teachers
8 and State Employees under Article 3B of Chapter 135 of the General Statutes."

9 **SECTION 4.(d)** Subsections (a) and (d) of this section are effective when they
10 become law. Subsections (b) and (c) of this section apply to insurance contracts or policies
11 issued, renewed, or amended on or after October 1, 2013.

12 **PART V. CLARIFY LAW/PROHIBIT SEX-SELECTIVE ABORTION**

13 **SECTION 5.(a)** Chapter 90 of the General Statutes is amended by adding the
14 following new Article to read:

15 "Article 1K.

16 "Certain Abortions Prohibited.

17 **§ 90-21.120. Definitions.**

18 The following definitions apply in this Article:

19 (1) Abortion. – As defined in G.S. 90-21.81(1).

20 (2) Attempt to perform an abortion. – As defined in G.S. 90-21.81(2).

21 (3) Woman. – As defined in G.S. 90-21.81(11).

22 **§ 90-21.121. Sex-selective abortion prohibited.**

23 (a) Notwithstanding any of the provisions of G.S. 14-45.1, no person shall perform or
24 attempt to perform an abortion upon a woman in this State with knowledge, or an objective
25 reason to know, that a significant factor in the woman seeking the abortion is related to the sex
26 of the unborn child.

27 (b) Nothing in this section shall be construed as placing an affirmative duty on a
28 physician to inquire as to whether the sex of the unborn child is a significant factor in the
29 pregnant woman seeking the abortion.

30 **§ 90-21.122. Civil remedies.**

31 (a) Any person who violates any provision of this Article shall be liable for damages,
32 including punitive damages pursuant to Chapter 1D of the General Statutes, and may be
33 enjoined from future acts.

34 (b) A claim for damages against any person who has violated a provision of this Article
35 may be sought by (i) the woman upon whom an abortion was performed or attempted in
36 violation of this Article, (ii) any person who is the spouse or guardian of the woman upon
37 whom an abortion was performed or attempted in violation of this Article, or (iii) a parent of
38 the woman upon whom an abortion was performed or attempted in violation of this Article if
39 the woman was a minor at the time the abortion was performed or attempted.

40 (c) A claim for injunctive relief against any person who has violated a provision of this
41 Article may be sought by (i) the woman upon whom an abortion was performed or attempted in
42 violation of this Article, (ii) any person who is the spouse, guardian, or current or former
43 licensed health care provider of the woman upon whom an abortion was performed or
44 attempted in violation of this Article, or (iii) a parent of the woman upon whom an abortion
45 was performed or attempted in violation of this Article if the woman was a minor at the time
46 the abortion was performed or attempted.

47 (d) Any person who violates the terms of an injunction issued in accordance with this
48 section shall be subject to civil contempt and shall be fined ten thousand dollars (\$10,000) for
49 the first violation, fifty thousand dollars (\$50,000) for the second violation, and one hundred
50 thousand dollars (\$100,000) for the third violation and each subsequent violation. Each
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1 performance or attempted performance of an abortion in violation of the terms of an injunction
2 is a separate violation. The fine shall be the exclusive penalty for civil contempt under this
3 subsection. The fine under this subsection shall be cumulative. No fine shall be assessed against
4 the woman upon whom an abortion is performed or attempted.

5 (e) The clear proceeds of any civil penalty assessed under this section shall be remitted
6 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

7 **"§ 90-21.123. Protection of privacy in court proceedings.**

8 In every proceeding or action brought under this Article, the court shall rule whether the
9 anonymity of any woman upon whom an abortion has been performed or attempted shall be
10 preserved from public disclosure if the woman does not give her consent to the disclosure. The
11 court, upon motion or sua sponte, shall make the ruling and, upon determining that the woman's
12 anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and
13 shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing
14 rooms to the extent necessary to safeguard the woman's identity from public disclosure. Each
15 order issued pursuant to this section shall be accompanied by specific written findings
16 explaining (i) why the anonymity of the woman should be preserved from public disclosure, (ii)
17 why the order is essential to that end, (iii) how the order is narrowly tailored to serve that
18 interest, and (iv) why no reasonable, less restrictive alternative exists. In the absence of written
19 consent of the woman upon whom an abortion has been performed or attempted, anyone who
20 brings an action under G.S. 90-21.122 shall do so under a pseudonym. This section may not be
21 construed to conceal the identity of the plaintiff or of witnesses from the defendant."

22 **SECTION 5.(b)** G.S. 90-21.81(2) reads as rewritten:

23 **"§ 90-21.81. Definitions.**

24 The following definitions apply in this Article:

25 ...

- 26 (2) Attempt to perform an abortion. – An act, or an omission of a statutorily
27 required act, that, under the circumstances as the actor believes them to be,
28 constitutes a substantial step in a course of conduct planned to culminate in
29 the performance of an abortion in violation of this ~~Article~~Article or Article
30 1K of this Chapter.

31"

32 **SECTION 5.(c)** This section becomes effective October 1, 2013, and applies to
33 violations occurring on or after that date.

34 **PART VI. AMEND WOMEN'S RIGHT TO KNOW ACT**

35 **SECTION 6.(a)** G.S. 90-21.82(1) reads as rewritten:

36 **"§ 90-21.82. Informed consent to abortion.**

37 No abortion shall be performed upon a woman in this State without her voluntary and
38 informed consent. Except in the case of a medical emergency, consent to an abortion is
39 voluntary and informed only if all of the following conditions are satisfied:

- 40 (1) At least 24 hours prior to the abortion, a physician or qualified professional
41 has orally informed the woman, by telephone or in person, of all of the
42 following:
43 a. The name of the physician who will perform the ~~abortion~~abortion to
44 ensure the safety of the procedure and prompt medical attention to
45 any complications that may arise. The physician performing a
46 surgical abortion shall be physically present during the performance
47 of the entire abortion procedure. The physician prescribing,
48 dispensing, or otherwise providing any drug or chemical for the
49 purpose of inducing an abortion shall be physically present in the
50

1 same room as the patient when the drug or chemical is administered
2 to the patient.

3 "

4 **SECTION 6.(b)** G.S. 90-21.83 is amended by adding a new subsection to read:

5 "(d) The Department shall cause to be available on the State Web site a list of resources
6 the woman may contact for assistance upon receiving information from the physician
7 performing the ultrasound that the unborn child may have a disability or serious abnormality
8 and shall do so in a manner prescribed by subsection (b) of this section."

9 **SECTION 6.(c)** The Department of Health and Human Services (Department)
10 shall amend its rules pertaining to clinics certified by the Department to be suitable facilities for
11 the performance of abortions under G.S. 14-45.1. The rules shall ensure that standards for the
12 clinics certified by the Department to be suitable facilities for the performance of abortions are
13 similar to those for the licensure of ambulatory surgical centers. These rules shall address the
14 on-site recovery phase of patient care at the clinic as well as the requirement for a transfer
15 agreement between a clinic and a hospital. No later than January 1, 2014, the Department shall
16 report to the Joint Legislative Oversight Committee on Health and Human Services on its
17 progress in amending the rules.

18 **SECTION 6.(d)** This section becomes effective October 1, 2013.

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20 **PART VII. SEVERABILITY AND EFFECTIVE DATE**

21 **SECTION 7.(a)** If any provision of this act or its application is held invalid, the
22 invalidity does not affect other provisions or applications of this act that can be given effect
23 without the invalid provisions or application, and to this end the provisions of this act are
24 severable. If any provision of this act is temporarily or permanently restrained or enjoined by
25 judicial order, this act shall be enforced as though such restrained or enjoined provisions had
26 not been adopted, provided that whenever such temporary or permanent restraining order or
27 injunction is stayed, dissolved, or otherwise ceases to have effect, such provisions shall have
28 full force and effect.

29 **SECTION 7.(b)** This act is effective as provided herein. Section 1 and this section
30 are effective when they become law.